IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

M.F.A.No.764 of 2002

(O.P.(M.V.) NO.1533 OF 1995 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA).

APPELLANT: PETITIONER:-

MANAGING DIRECTOR, K.S.R.T.C.,
REPRESENTED BY THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C, KOZHIKODE.

BY STANDING COUNSEL SRI.K.PRABHAKARAN.

RESPONDENTS: RESPONDENTS:-

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1. K.E.VARGHESE, VILLAGE BELAPUR,
   KOKARBHAVAN P.O., THANA, MAHARASTHRA (S)
   NOW RESIDING AT KINATTUKARA MODAYIL,
   THADAIYOOR P.O., EZHUMATTOM, THIRUVALLA (DIED).

2. EAPEN VARGHESE, ROOM NO.5,
   MATHRUKA BUILDING, CALL STREET, THANA,
   MAHARASHTRA STATE, NOW RESIDING AT
   KINATUKARA MODAYIL, THADIYOOR P.O.,
   EZHUMATTOOR, THIRUVALLA.

3. ORIENTAL INSURANCE CO. LTD.,
   REPRESENTED BY THE DIVISIONAL MANAGER, KOTTAYAM.

4. DEENAMMA VARGHESE, AGED 59,
   W/O.K.E.VARGHESE, MINATUKARA MODIYIL,
   THADIYOOR, EZHAMATTOOR, THIRUVALLA.

5. EAPEN VARGHESE, AGED 32,
   S/O.K.E.VARGHESE, KINATUKARA MODIYIL, THADIYOOR,
   EZHAMATOOR, THIRUVALLA.

6. THOMAS VARGHESE, AGED 23,
   S/O.K.EVARGHESE, KINATTUKARA MODIYIL,
   THADIYOOR, EZHAMATTOOR, THIRUVALLA.

R3 BY ADV.SRI.JACOB MURIKEN.
R4 TO R6 BY ADV.SRI.K.R.SUNIL.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.764 of 2002

Dated, this the 2nd day of April, 2007

JUDGMENT

The petitioner in O.P.(M.V.).No.1533 of 1995 on the file of Motor Accidents Claims Tribunal, Pala is the appellant. The appellant is the Managing Director of Kerala State Road Transport Corporation. The appellant filed O.P.(M.V.) No.624 of 1994 before the Motor Accidents Claims Tribunal, Kottayam claiming compensation on account of the damage sustained to stage carriage bus belonging to K.S.R.T.C. That case was subsequently transferred to Motor Accidents Claims Tribunal, Pala and renumbered as O.P.(M.V.).No.1533 of 1995. The appellant filed this Original Petition claiming compensation alleging that a stage carriage bus owned by it bearing registration No.KL-15/1010 (T.R.976) met with an accident at 1.10 P.M. on 25.9.1993 on the road between Monippally and Achikal. It was alleged that the accident occurred due to the negligent driving of the lorry bearing registration No.MH-04/C-3626 driven by the 2nd respondent. The appellant claimed an amount of Rs.45,615/- as damages. The Tribunal found that on the side of the appellant only a District

Transport Officer was examined as P.W.1, but he is not an eye witness. Hence his evidence cannot be relied and dismissed the application.

2. The Tribunal has not considered the evidentiary value of the documents produced by the appellant. It did not consider whether the appellant is entitled to the quantum of compensation as claimed in the Original Petition. Merely because there is no oral evidence, it is not necessary to dismiss the claim petition if there is documentary evidence adduced to prove the claim. So, the award passed by the Tribunal is unsustainable and liable to be set aside.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing O.P.(M.V.)No.1533 of 1995 is hereby set aside. The matter is remanded to the Motor Accidents Claims Tribunal, Palai for fresh disposal in accordance with law after giving a reasonable opportunity to all parties concerned to adduce further evidence, if any. The parties shall appear before the Tribunal on 3.5.2007.

K.Padmanabhan Nair
Judge

vku/-